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IN THE
Supreme Court of the United States

October Term, 1943

No. 220

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GOR-HIL

WALTER FORD GORMLY,
Petitioner-Appellant,
vs.
UNITED STATES,
Respondent-Appellee.

Petition for Writ of Certiorari to the United States Circuit
Court of Appeals for the Seventh Circuit

**PETITION FOR WRIT OF CERTIORARI
AND BRIEF**

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No.

<p>WALTER FORD GORMLY, <i>Petitioner and Appellant,</i></p> <p><i>vs.</i></p> <p>UNITED STATES, <i>Respondent and Appellee.</i></p>

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I. SUMMARY STATEMENT OF MATTER INVOLVED

This is an appeal from a conviction under the Selective Training and Service Act of 1940, as amended, and the rules and regulations thereunder, for failure to carry out a direction alleged to have been issued by Local Board No. 2 of Milwaukee, Wisconsin, for defendant to report to said Board on Aug. 24, 1942, for work of national importance, as a conscientious objector to both combatant and noncombatant service in the land or naval forces of the United States. Petitioner was indicted by grand jury (T. 2) Oct. 1, 1942. Trial was had Feb. 5, 1943, by jury (T. 21) and, upon verdict of guilty, defendant was sentenced the same day (T. 41) to imprisonment in an institution of the type to be designated by the Attorney General, or his authorized representative, for the period of five years (T. 41). The court recommended commitment to a U. S. penitentiary. (T. 42) In addition to constitutional questions and issues of general law, petitioner charges lack of due process and fair trial.

The defendant was classified by his local board in Class IV-E (T. 60). A member of the local board, without board meeting or vote, sent to petitioner a form of order to report to the local board, (T. 60, 61, 73) on Aug. 24, 1942, at 10:00 A.M. The purpose of reporting was to send petitioner from Milwaukee, Wisconsin to work at Camp Merom, Ind., (T. 13) to which the National Director of Selective Service had assigned him. (T. 73) The record does not show that petitioner ever accepted this assignment. On the day and hour in question petitioner reported to the United States Attorney. (T. 83) Petitioner refused to go to the camp because conscription therein made him a participant in the war machine and an accessory to murder on the battlefield. (T. 65) The camp in question is under the direction of the American Friends Service Committee, affiliated with the Friends, a religious organization of which defendant is not a member. (T. 76, 79, 80, 82) He is a Methodist (T. 65, 82). Petitioner, as an assignee at such camp, would be subjected to hard labor; at hours not consented to by him; without compensation; an object of charity as to board and spending money (T. 80); without free time except by consent of the Camp Director, by furlough or leave; and his earnings paid into the general funds of the United States. (S. S. Regulations, Part 691)

On June 9th the United States Circuit Court of Appeals for the Seventh Circuit ^(T. 44, 101) affirmed the judgment of the United States District Court [^] for the Eastern District of Wisconsin, and motion for rehearing made June 19, 1943, was denied on July 2, 1943. (T. 101)

II. REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. The decision of said Circuit Court of Appeals for the Seventh Circuit, as to appellant's contention that the term for which the Grand Jury was empaneled had expired before the return of the indictment, and said indictment was therefor invalid, is a decision of a federal question in conflict with applicable decisions of this Court. (T. 96, 94)
2. The decision of said Circuit Court of Appeals that the order directing the defendant to report, on which the indictment was based, signed simply by one member of the Board, there being positive evidence that the Board had not met or voted to authorize the issuance of the order,

involves an important question of federal law which has not been, but should be settled by this Court, and is an erroneous decision of an important question of general law in conflict with the weight of authority. (T. 96-8, 94)

3. The decision of said Circuit Court of Appeals that internment in a conscientious objectors' camp, at the conscientious objector's expense, or on charity, without compensation, does not constitute involuntary servitude, and that it may be imposed as a condition of exemption from military service, is a decision of federal question in conflict with applicable decisions of this Court. (T. 94, 96)

4. The decision of said Circuit Court of Appeals that the order in question is not an infringement of the provision of the United States Constitution that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, involves an important question of federal law which has not been, but should be settled by this court, and is a decision of a federal question in a way probably in conflict with applicable decisions of this court. (T. 94-96)

5. The decision of said Circuit Court of Appeals, contrary to appellant's contention that Congress could not delegate to the President, and the President could not re-delegate to the Director of Selective Service, the Local Boards, and the National Service Board for Religious Objectors, legislative and judicial powers, in derogation of petitioner's liberty is a decision of an important question of federal law which has not been, but should be settled by this court, and is a decision of a federal question in a way probably in conflict with applicable decisions of this court. (T. 94, 96)

6. The decision of the Circuit Court of Appeals that the defendant was bound to accept the assignment to work of national importance at a conscientious objectors camp is a decision of a federal question in conflict with applicable decisions of this Court, and with the general law. (T. 94, 96)

7. The decision of the Circuit Court of Appeals that the Selective Training and Service Act of 1940 and the regulations thereunder, denying defendant right of counsel, is due process is a decision of a federal question in conflict with the decisions of this Court. (T. 94, 96)

8. The decision of the Circuit Court of Appeals that an indictment for refusal to work need not allege that the work was under civilian direction, as required by